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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,473	01/29/2004	Andrew M. Proehl	50N3127.01	3618
24337 7590 03/19/2009 MILLER PATENT SERVICES 2500 DOCKERY LANE RALEIGH, NC 27606				
EXAMINER NGUYEN, LE V				
ART UNIT 2174		PAPER NUMBER		
MAIL DATE 03/19/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/767,473

**Applicant(s)**

PROEHL ET AL.

**Examiner**

LE NGUYEN

**Art Unit**

2174

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 87-104 is/are pending in the application.
- 4a) Of the above claim(s) 87-103 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 104 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

1. Newly submitted claims 87-104 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: while claims 87-94 are drawn to a method for interacting with video or audio systems (class/subclass 715/716), claim 95 is drawn to a product wherein the video data segments may be traversed (class/subclass 715/720), claims 96-103 are drawn to a television product dealing specifically with video data (class/subclass 715/729), and claim 104 is drawn to a method wherein the video program segments are indexed for accessibility (class/subclass 715/721). Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 87-103 are withdrawn from consideration as being directed to non-elected invention(s). See 37 CFR 1.142(b) and MPEP j 821.03.
2. This communication is responsive to an amendment filed 12/22/08.
3. Claims 87-104 are pending in this application; and, claims 87, 96 and 104 are independent claims. Claims 1-86 have been cancelled; and, claims 87-104 have been added.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 104 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilcox et al. ("Wilcox", US 6,678,891 B1) in view of Gospel et al. ("Gospel", US 6,753,928 B1), and further in view of Knowles et al. ("Knowles", US 6,505,348 B1).

As per claim 104, Wilcox teaches, in an audio/visual (AV) system, a method for navigation of menu options available to a user of the AV system comprising: entering a graphical user interface (GUI) in a menu system that is displayed on a display (figs. 3-4); generating a signal for displaying a first navigable list of menu options on the display with one of the menu options shown at a location of the display being highlighted, the first navigable list of menu options having a plurality of fields arranged in a first linear configuration (fig. 7; col. 23, lines 15-25; element 112 having fields 120 arranged in a first linear configuration with menu option highlighted (110) and may be placed in various locations on the display); responsive to a navigation command from a remote controller, moving the first navigable list of menu options of the GUI to cause another field of the plurality of fields to move to the location that is highlighted, and thus highlight the another field (figs. 3-4 and 7; scrolling/moving via remote controller to cause another field of the plurality of fields to move to highlighted 110); responsive to a navigation command from the remote controller, generating a signal for displaying a second navigable list of menu options associated with the highlighted field, the second navigable list of menu options arranged in a second linearly configured set of fields which intersect the first linear configuration of fields of the first navigable list of menu options at the highlighted location (figs. 3-4 and 7; second navigable list of menu

options 114 of second linear configuration having fields 122 and intersects the first linear configuration wherein second navigable list is associated with the highlighted 110); navigating to a menu option of the second navigable list of menu options in response to a navigation command wherein the first linear configuration of the first menu is oriented substantially horizontally, and the second linear configuration of the second menu is oriented substantially vertically (figs. 3-4 and 7; scrolling/moving via remote controller to cause another field of the plurality of fields to move to highlighted 128); and selecting the menu option of the second navigable list in response to a selection command from the remote controller (figs. 3-4 and 7; col. 23, lines 15-32; claim 12).

Carlson does not explicitly disclose menu options that overlays AV content on the display while the AV content is currently playing, i.e., navigation of menu options being displayed simultaneously with playing of AV content. Gospel teaches an overlay menu being displayed simultaneously with playing of AV content (figs. 3-8; col. 2, lines 1-18; col. 3, lines 38-49; menus are overlaid on the currently tuned/selected live video). In view of KSR, 127 S. Ct. 1727 at 1742, 82 USPQ2d at 1397 (2007), it would have been obvious to an artisan at the time of the invention to incorporate the method of Gospel with the method of Wilcox in order to provide users with tuning/selection feedback and confirmation.

Wilcox and Carlson do not explicitly disclose AV content currently playing on the display that continues to play unless the menu option selected is a menu option that begins playing a different selection of AV content and, moreover, upon selection of the

menu option from the second navigable list, ceasing the generating of the signals for displaying the first and second navigable list of menu options so that the first and second navigable list of menu options disappear from the display and playing/taking an action associated with the menu selection. Knowles teaches AV content currently playing on the display that continues to play unless the menu option selected is a menu option that begins playing a different selection of AV content and, moreover, upon selection of the menu option from the second navigable list, ceasing the generating of the signals for displaying the first and second navigable list of menu options so that the first and second navigable list of menu options disappear from the display and playing/taking an action associated with the menu selection (col. 15, lines 1-19). ). In view of KSR, 127 S. Ct. 1727 at 1742, 82 USPQ2d at 1397 (2007), it would have been obvious to an artisan at the time of the invention to incorporate the method of Knowles with the method of Wilcox and Carlson so that users may view other AV content without cluttering of the view.

### ***Response to Arguments***

6. Applicant's arguments with respect to the cancelled claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §

706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Inquires***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lê Nguyen whose telephone number is **(571) 272-4068**. The examiner can normally be reached on Monday - Friday from 7:00 am to 3:30 pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Hong, can be reached at (571) 272-4124.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lvn

Patent Examiner

March 15, 2009

/Stephen S. Hong/

Supervisory Patent Examiner, Art Unit 2178